UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, Michael Lee Ward and Linda Justis Ward, Debtors.	C/A No. 22-03569-HB Chapter 13 **ORDER DENYING DEBTOR'S MOTION TO CONTINUE ADMINISTRATION OF CASE OF DECEASED DEBTOR**

This matter is before the Court on a Motion for Continued Administration of Estate (the "Motion") filed by deceased Debtor Michael Lee Ward and Joint Debtor Linda Justis Ward ("Debtors").[1] Annemarie Belanger Mathews, the Chapter 13 Trustee (the "Trustee"), filed a Response to the Motion (the "Response"),[2] and Debtors filed a Reply (the "Reply").[3] The Court conducted a hearing on the Motion on June 15, 2023, at which the Trustee, her counsel, and counsel for Debtors were present. No testimony was introduced, and the only exhibit admitted into evidence was an unsigned proposed Amended Schedule I and J (the "Proposed Amended Schedules") reflecting the changes in income and expenses following Mr. Ward's passing. At the conclusion of the hearing, the Court took the matter under advisement.[4]

The matter presents an issue of first impression: whether the Court should permit the continued administration of a deceased debtor's case when a Chapter 13 plan was on file at

[1] ECF No. 33, filed Apr. 25, 2023.
[2] ECF No. 37, filed May 1, 2023.
[3] ECF No. 38, filed May 3, 2023.
[4] For purposes of this Order, the Court will only consider the Motion and Debtors' request to continue the administration of the Chapter 13 case. The Court also considered confirmation of the Debtors' Chapter 13 plan at a hearing held on June 15, 2023, which will be addressed by a separate order.

the time of debtor's passing which may be feasible and confirmable without modification. The Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157(a) and 1334(b). Having considered the Motion, the arguments of counsel at the hearing, and all matters of record before it, pursuant to Fed. R. Civ. P. 52, which is made applicable to this matter by Fed. R. Bankr. P. 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law:[5]

FINDINGS OF FACT

Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on December 29, 2022 (the "Petition Date"). Laura Ward, their daughter (the "Daughter"), who was living with Debtors as of the Petition Date and acting as power of attorney ("POA") for them, signed the Voluntary Petition on their behalf.[6] According to the schedules of assets and liabilities (the "Schedules")[7] filed with the bankruptcy petition, Debtors do not own any real estate and have few assets of significant value. The total value of Debtors' property listed on Schedules A/B is $17,186.00.

The Schedules indicate that Debtors have unsecured debts totaling $56,018.00, some of which are individual to each Debtor and some of which are joint debts. The bar date for non-governmental creditors to file proofs of claim was March 9, 2023. A total of 11 claims were filed asserting debts in the aggregate amount of $79,443.26. Mr. Ward is only liable for three debts: (1) a joint credit card debt owed to Merrick Bank in the amount of $976.63;[8] (2) an unsecured debt incurred with a relative owed to Toyota Motor Credit Corporation in the

[5] To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any conclusions of law constitute findings of fact, they are so adopted.
[6] ECF Nos. 10 and 11, filed Dec. 29, 2022.
[7] ECF No. 1, filed Dec. 29, 2022.
[8] Proof of Claim 1-1, filed Jan. 7, 2023.

amount of $5,921.16 for a deficiency on a vehicle that was surrendered prior to the Petition Date (the "Toyota Debt");[9] and (3) an unsecured priority debt owed to the Internal Revenue Service in the amount of $1,284.00, for which both he and his wife are liable.[10]

According to the Schedules, as of the Petition Date, Mrs. Ward had regular monthly income from Social Security of $1,485.00, and Mr. Ward had regular monthly income of $8,909.81—consisting of Social Security, retirement, disability, a pension, tax refunds, and a $4,566.54 monthly contribution from his Daughter. Their net monthly income, according to Schedule J, was $1,746.81.

Debtors filed their initial Chapter 13 plan with the petition on December 29, 2022[11] and filed their Financial Management Course Certificates on January 7, 2023.[12] The meeting of creditors pursuant to 11 U.S.C. § 341 (the "§ 341 Meeting") was held on March 7, 2023. On March 15, 2023, Debtor filed a Pre-Confirmation Modified Chapter 13 Plan (the "Plan"), which provides for payments of $265.00 per month for 60 months.[13] At the § 341 Meeting, the Daughter appeared on Mr. Ward's behalf.[14] The Plan confirmation hearing was originally scheduled for April 13, 2023, but was continued several times and ultimately scheduled to coincide with the hearing on the Motion currently before the Court. Mr. Ward passed away on April 1, 2023—prior to the continued confirmation hearing.[15]

[9] Proof of Claim 7-1, filed Feb. 9, 2023. The Retail Installment Sale Contract attached to the Proof of Claim indicates that Kristen Michele Nivens co-signed as a borrower for the purchase of the 2018 Mazda CX-5. The vehicle is not listed in the Schedules.
[10] Proof of Claim 9-2, filed Mar. 7, 2023.
[11] ECF No. 3.
[12] ECF Nos. 14 and 15.
[13] ECF No. 23, filed Mar. 15, 2023.
[14] Prior to his death, Mr. Ward suffered from dementia. At the hearing, it was explained to the Court that the Daughter appeared at the first Meeting of Creditors alone on the Debtors' behalf, but the Trustee set up a Zoom meeting afterwards to confirm that Mr. Ward understood that he had filed bankruptcy and that his daughter would be acting as personal representative for both himself and his wife throughout the bankruptcy.
[15] ECF No. 34, filed Apr. 25, 2023.

Debtors filed the Motion on April 25, 2023. According to the Motion, Mr. Ward left no assets required to go through the probate process, no probate estate has been opened, and none is expected to be opened. The Daughter continues to live in the household with Mrs. Ward and contributes to the living expenses. In the Motion, Debtors seek to have both Debtors' cases proceed in Chapter 13 and seek authority for the Daughter to continue making decisions for her deceased father and be given authority to sign amended schedules, statements, reports, and other administrative documents as may be required to complete his bankruptcy case.

On May 1, 2023, the Trustee filed the Response, requesting a hearing on the Motion because the issue presented is one of first impression. In the Response, the Trustee noted that Debtors' Chapter 13 case is closely related to the Chapter 13 case of their Daughter,[16] as they all shared their income and expenses as a single household, and indicated she had yet to receive any updated information regarding Mrs. Ward and her Daughter's financial situation after Mr. Ward's death. Accordingly, the Trustee indicated it was unclear whether the Plan was confirmable. Debtors filed the Reply on May 3, 2023, stating that Proposed Amended Schedules I and J had been provided to the Trustee supporting the Plan's feasibility.[17] The Proposed Amended Schedules, however, cannot be filed unless the Court either authorizes the Daughter to sign for Mr. Ward or orders that Mr. Ward's case be dismissed. Moreover, in the

[16] Case No. 22-03317-hb, filed on Dec. 2, 2022.

[17] These Proposed Amended Schedules were provided to the Court and were admitted as an Exhibit at the hearing on June 15, 2023. ECF No. 50, docketed June 15, 2023. The Proposed Amended Schedules omit Mr. Ward's contribution to the income reflected on Schedule I and show that Mrs. Ward now has regular income of $6,501.54 a month, consisting of Social Security, a survivorship interest in her husband's retirement of $300, and a monthly contribution of $4,566.54 from the Daughter. Proposed Amended Schedule J shows increased expenses attributable to Mrs. Ward, including for healthcare, of $6,156.00. The monthly net income is reflected as $345.54—as opposed to the $1,746.81 originally indicated on Schedule J filed with the Court.

Reply, Debtors indicated that Mrs. Ward was expected to receive $30,000.00 in insurance proceeds as a beneficiary of Mr. Ward's life insurance policies.

At the hearing on the Motion, Debtors' counsel argued that the Daughter was the most appropriate party to continue administration of Mr. Ward's case given Mrs. Ward's physical and mental deterioration. Although the Trustee indicated she did believe that Mrs. Ward was able to make payments under the Plan given the low payment amount, Debtors' counsel admitted that household expenses could increase in the future given Mrs. Ward's health issues. Further, upon questioning, Debtors' counsel could not articulate any concrete benefit to either Debtors or their creditors if the Court allowed Mr. Ward's bankruptcy case to continue being administered to its conclusion.

CONCLUSIONS OF LAW

Despite Mr. Ward's passing approximately four months after the Petition Date, Debtors seek to have both of their cases continue. Prior to his death, the § 341 Meeting was held, and the Plan was filed; however, the confirmation hearing had yet to be held and the Plan had yet to be confirmed. Debtors argue that (a) further administration of the case is possible because the Plan on file is confirmable and does not require any further amendments as Mrs. Ward has sufficient disposable income to fund the proposed payments under the Plan and (b) it is in the best interest of all parties, including the creditors of the decedent, for the Plan to be confirmed and payments to be made as contemplated therein. Moreover, Debtors seek to have their Daughter appointed as the appropriate authority to make decisions for the decedent and to sign any amendment to the Schedules or any other administrative documents to be filed with the Court during the remainder of the case. For the reasons set forth below, the Court denies the relief sought.

A. *Further Administration Under Bankruptcy Rule 1016*

The duration of Chapter 13 cases usually spans over at least three to five years before a debtor completes plan payments and receives a discharge. It is not uncommon for a debtor to die during the pendency of his or her bankruptcy case. No provision in the Bankruptcy Code gives courts specific direction as to whether—or how—a case should proceed upon the death of a debtor; however, the Federal Rules of Bankruptcy Procedure provide some guidance on how the case may proceed or what procedure the parties should follow.[18] *See In re Sizemore*, 645 B.R. 190 (Bankr. D.S.C. 2022) (citing *In re Gariepy*, C/A No. 11-00827-JW, slip op. at 3 (Bankr. D.S.C. Jan. 3, 2014)); *see also In re Waring*, 555 B.R. 754 (Bankr. D. Colo. 2016).

Pursuant to Fed. R. Bankr. P. 1016, when a chapter 13 debtor dies,

> [t]he case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.[19]

What constitutes "further administration" is not defined by the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure. Instead, as the Court noted in *In re Brown*, "[t]he rule merely provides that further administration must be 'possible' and 'in the best interest of the parties.'" C/A No. 12-07082-jw, slip op. at 5 (Bankr. D.S.C. Mar. 25, 2013).

The burden to satisfy the requirements of Bankruptcy Rule 1016 is on the party seeking further administration of the bankruptcy case—in this instance, the Debtors. *In re Goldston*,

[18] In the Motion, Debtors rely on 11 U.S.C. §§ 1328(g) and 109(h)(4) as statutory support for the relief sought; however, reliance on such authority is misplaced given the facts of the case and the issues presented.

[19] Notably, Fed. R. Bankr. P. 1016 Advisory Committee Notes state that "[i]n a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, the likelihood is that the case will be dismissed." *See also In re Waring*, 555 B.R. at 761 ("Given the structure of the Chapter 13 process, it should not be surprising that the normal default presumption upon death is dismissal.").

627 B.R. 841, 865 (Bankr. D.S.C. 2021) (citing *Gariepy*, C/A No. 11-00827-JW, slip op. at 4) ("The burden rests on the party requesting further administration of the Chapter 13 case following the death of the debtor to create a record that supports such an exceptional finding.")). Any determination of whether further administration of a deceased debtor's Chapter 13 case is possible and in the best interest of the parties under Bankruptcy Rule 1016 is a fact-specific inquiry, which the Court must determine on a case-by-case basis, regardless of whether any creditor objects or the Chapter 13 Trustee consents to the relief requested. *In re Sizemore*, 645 B.R. 190, 195 (Bankr. D.S.C. 2022) (citations omitted). While the Court is granted "significant discretion in determining whether further administration is possible and in the best interest of the parties, such discretion…cannot contradict the Bankruptcy Code." *See Gariepy*, C/A No. 11-00827-JW, slip op. at 4–5. The Court has considered each element of Fed. R. Bankr. P. 1016 individually to determine if Debtors' case should be further administered at this time and, considering the facts and the record before it, the Court concludes that further administration of Mr. Ward's case is neither possible nor in the best interest of parties.

1. The Possibility of Further Administration

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure provide for the appointment of a third party to be substituted for a deceased debtor to fulfill the responsibilities of a debtor in a Chapter 13 case. *In re Sizemore*, 645 B.R. at 195 (quoting *In re Swarthout*, C/A No. 09-06263-jw, slip op. (Bankr. D.S.C. Jan. 14, 2014)). Bankruptcy Courts have routinely allowed a personal representative appointed by the probate court to continue administration of a debtor's bankruptcy case upon the death of the debtor for the limited purpose of seeking a hardship discharge or closing the case. *Id.* The authority that

such personal representatives have been granted in a bankruptcy case, however, is not without limits—actions within the scope of further administration only include those administrative or ministerial acts necessary to bring the bankruptcy case through the finish line to allow the debtor's estate to get a discharge. *Swarthout*, C/A No. 09-06263-JW, slip op. at 3.

In *Swarthout*, the Court, faced with a motion requesting the continued administration of joint debtor cases following the passing of one of the debtors, authorized the personal representative of the deceased debtor's probate estate to act on his behalf to request a discharge and waiver of the personal financial management course given that plan payments had been completed. *Swarthout*, C/A No. 09-06263-JW, slip op. at 5-6. The Court, however, emphasized the limits of the representative's authority:

> [A] third party cannot step into the shoes of a debtor to take actions that must [be] taken by the debtor personally in accordance with the express language of the Bankruptcy Code, including, as examples, proposing a plan under 11 U.S.C. § 1321, converting a case under 11 U.S.C. § 1307, and modifying a plan under 11 U.S.C. §[] 1323.

Swarthout, C/A No. 09-06263-JW, slip op. at 2-3 (citation omitted). *See also Brown*, C/A No. 12-07082-jw, slip op. at 8 (finding that a personal representative of a debtor's estate cannot file and obtain confirmation of a plan in an individual bankruptcy case following the death of the debtor); *In re Shepherd*, 490 B.R. 338, 343 (Bankr. N.D. Ind. 2013) (denying requests to substitute the personal representative for the debtor and to allow the personal representative to modify the plan); *In re Martinez*, C/A No. 13-50438-CAG, 2013 WL 6051203, at *1 (Bankr. W.D. Tex. Nov. 15, 2013) (citing *Shepherd*, 490 B.R. at 340-41) ("It is not appropriate to substitute a probate estate for a Chapter 13 debtor, nor is there any mechanism in bankruptcy law allowing for this.").

Here, the Daughter's ability to continue the administration of her father's bankruptcy case is questionable at best for mainly two reasons. First, she was not—nor will she be—appointed by the probate court as her father's personal representative as Mr. Ward has no assets requiring a probate estate to be opened. Second, while she was the POA for both Debtors, and even signed the Voluntary Petition on their behalf, under South Carolina law, a power of attorney terminates when the principal dies. *See* S.C. Code Ann. § 62-8-110(a)(1) ("A power of attorney terminates when the… principal dies"). Mrs. Ward, the surviving joint debtor, is not in the best of health and also relies on her Daughter to act as her POA, and thus is also not in a position to act on her husband's behalf. Accordingly, it is unclear who would—or legally could—continue the administration of Mr. Ward's case even if the Court found that further administration was possible under the facts of this case.

Aside from the logistics of who would act on Mr. Ward's behalf, the Court also finds that continued administration of this case is not possible as it would require a third party to take actions outside what courts have generally accepted to be the limits of the "further administration" contemplated by Bankruptcy Rule 1016. Numerous cases stand for the proposition that a debtor who dies *after* confirmation of a Chapter 13 plan but before completion of all payments may obtain a discharge with the help of a personal representative. *See, e.g., In re Waring*, 555 B.R. at 762.

In cases where a plan has been confirmed, this Court has often permitted continued administration when all that remains to complete the case is the completion of "incidental acts," *see In re Powell*, C/A No. 08-07093-jw, slip op. at 3 (Bankr. D.S.C. Jan. 23, 2014) (permitting further administration when all plan payments have been completed in order to permit a request for discharge), or when there is a single voluntary payment to complete plan

payments without modification of the confirmed plan, either by continuing plan payments from the income of a surviving joint debtor or by a timely lump sum payment paid by the deceased debtor's probate estate, *see Swarthout*, C/A No. 09-06263-JW, slip op. at 5 ("[F]urther administration appears possible where a surviving joint debtor has the ability to complete all payments *due under the original confirmed plan* to the discharge stage of the case using the assets of the deceased debtor and/or the income or assets of the surviving joint debtor, thereby allowing for the joint debtors' plan to be fully performed and satisfied.") (emphasis added). Similarly, this Court has followed the majority view held by bankruptcy courts in finding that Bankruptcy Rule 1016 permits the further administration of a deceased debtor's bankruptcy case to allow the deceased debtor to receive a hardship discharge, if eligible. *See Sizemore*, 645 B.R. at 196; *Quint*, C/A No. 11-04296-jw, slip op at 5. n.6 (highlighting prior occasions where the Court has granted a hardship discharge in a deceased debtor's case); *In re Inyard*, 532 B.R. 364, 368–69 (Bankr. D. Kan. 2015) ("[T]he vast majority [of courts] hold that Rule 1016 does not, as a matter of law, bar a hardship discharge for a deceased debtor, even if no further payments are made after death."); *In re Ferguson*, No. 11-50950-CAG, 2015 WL 4131596, at *2 (Bankr. W.D. Tex. Feb. 24, 2015) ("[C]ourts continually allow deceased debtors to move for a hardship discharge.").[20]

There is no controlling precedent from higher courts, however, addressing the issue of whether a bankruptcy case can continue if a Chapter 13 debtor dies *before* confirmation of a plan. Bankruptcy courts faced with the issue of continued administration of a bankruptcy case

[20] It also appears that the bankruptcy courts which have granted hardship discharges for deceased debtors have done so only in circumstances where the debtor died post-confirmation. *See In re Graham*, 63 B.R. 95 (Bankr. E.D. Pa. 1986); *In re Bond*, 36 B.R. 49 (Bankr. D.N.C. 1984); *In re Dickerson*, No. 10-60680, 2012 WL 734160 (Bankr. N.D. Ohio Mar. 6, 2012); *In re RedWine*, C/A No. 09-84032-JB, 2011 WL 1116783, at *1 (Bankr. N.D. Ga. Mar. 8, 2011).

in the context of the death of a debtor prior to confirmation have generally dismissed the case. *See In re Waring*, 555 B.R. at 754; *In re Fogel*, 550 B.R. 532 (D. Colo. 2015); *In re Fuller*, No. 05–18831 HRT, 2010 WL 1463150, at *1-2 (Bankr. D. Colo. Mar. 11, 2010); *see also In re Brown*, C/A No. 12-07082-jw, slip. op. at 8 ("It appears that the 'further administration' of Chapter 13 cases contemplated by Rule 1016 is best restricted to cases where the plan has been confirmed prior to the death of the debtor"). The Court has not found, however, nor have the parties presented it with, any caselaw where courts have had to decide the issue under a similar set of facts as here—where the debtor died *prior* to confirmation of a Chapter 13 plan that was already on file at the time of the debtor's passing and was deemed by the trustee to be confirmable.

"[T]he wording of Rule 1016 limits further administration of a deceased debtor's case to completing a case as it existed at the time of the debtor's death." *See Goldston*, 627 B.R. at 865 (citing *In re Swarthout*, C/A No. 09-06263-JW, slip op. at 5-6). Mr. Ward died shortly after he filed the Chapter 13 petition and before confirmation of the proposed Plan. Although the Trustee stated at the hearing that the proposed Plan, which contemplates payments of $265.00 per month, appears to be confirmable despite Mr. Ward's passing and without his income, the Plan now relies heavily on contributions by the Daughter, who is in a Chapter 13 bankruptcy herself.[21] Accordingly, the Court has concerns regarding Debtors' ability to fund the Plan.[22]

[21] As set forth *supra* at fn. 17, the Amended Schedules admitted as Exhibit 1 at the hearing reflect that the sole sources of Mrs. Ward's income are Social Security ($1,635.00 per month) and a survivorship interest in Mr. Ward's church retirement ($300.00 per month). The remaining $4,566.54 is attributable to contributions by the Daughter, who is in her own bankruptcy case, Case No. 22-03317-hb, filed on December 2, 2022. At the hearing, Debtors' counsel indicated that the expenses were anticipated to significantly increase given Mrs. Ward's health condition.

[22] The funding of the plan must not be speculative or unrealistic. *In re Costello*, No. 10-03385, 2011 WL 2712970, at *2 (Bankr. N.D. Iowa July 12, 2011) ("Projections of income necessary to fund a plan must not be speculative, conjectural or unrealistic."); *see also Kristan v. Nesbit (In re Nesbit)*, BAP No. EP 07-068, 2008

Moreover, the Bankruptcy Code's requirement for confirmation of a Chapter 13 plan appear to limit the relief the Debtors seek here. "The Chapter 13 plan is the linchpin of the entire Chapter 13 exercise." *In re Waring,* 555 B.R. at 754. As instructed by the United States Supreme Court in *United Student Aid Funds, Inc. v. Espinosa,* the Court must independently examine a debtor's Chapter 13 plan to ensure compliance with the applicable provisions of the Bankruptcy Code. 130 S.Ct. 1367, 1381, 1381 n.14 (2010). Section 1322(a)(1) provides that a Chapter 13 plan "shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee." 11 U.S.C. § 1322(a)(1). Section 1325(a)(6), in turn, provides that the Court shall confirm a plan if, among other things, "*the debtor* will be able to make all payments under the plan and to comply with the plan."[23] 11 U.S.C. § 1325(a)(6); *see also In re Brown*, C/A No. 12-07082-jw, slip op. at 5 (Bankr. D.S.C. Mar. 25, 2013). Courts often confirm plans in Chapter 13 joint cases where one debtor individually makes no financial contribution—in instances for example where one spouse works outside the home and the other does not. The situation here is entirely different because, at the time of Mr. Ward's death, the Plan had yet to be confirmed, and too many lose ends remain such as the need to amend the schedules, file administrative documents, and possibly request a moratorium of plan payments or other plan modification, which would not be possible for the deceased Debtor.

The majority rule appears to be that the "further administration" of Chapter 13 cases contemplated by Rule 1016 is best restricted to cases where the plan has been confirmed *prior* to the death of the debtor. *See In re RedWine,* No. 09–84032–JB, 2011 WL 1116783, at *1

WL 8664762, at *5 (B.A.P. 1st Cir. June 17, 2008) ("While it is impossible to predict with absolute certainty, mere speculation as to the source of funds is not sufficient to satisfy feasibility.").

[23] Notably, pursuant to 11 U.S.C. § 109(a), only a "person" may be a "debtor" and a decedent's estate is not a "person" as that term is defined in 11 U.S.C. § 101(41).

(citing *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999)) ("Further administration may only be possible if a plan has been confirmed."); *see also Waring*, 555 B.R. at 763.[24] Under the facts of this case and record before it, the Court is not willing to stretch the boundaries of what has been generally interpreted to constitute "further administration" of a deceased debtor's Chapter 13 case to the extent the Debtors request.

2. Further Administration Is Not in the Best Interest of the Parties

Even if further administration was possible, there remains a question as to whether continued administration would be in the best interest of the parties. The elements for further administration under Bankruptcy Rule 1016 are conjunctive such that a party seeking further administration must not only show that such administration is possible, but also that it is in the best interest of the parties. *Goldston*, 627 B.R. at 867. The term "parties," as used in Bankruptcy Rule 1016, is not defined, and courts have reached different conclusions as to whom the second factor applies. *See Goldston*, 627 B.R. at 868 (noting the different conclusions reached by various courts).[25]

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[24] This case cites to numerous cases with a somewhat similar fact pattern as here in which the Court dismissed the case *sua sponte*, including *In re Martinez*, No. 13-50438-CAG, 2013 WL 6051203, at *1 (Bankr. W.D. Tex. Nov. 15, 2013); *In re Navarro*, No. 12–21062PM, 2012 WL 5193743 (Bankr. D. Md. Oct. 19, 2012); *In re Wilson*, No. 2:10-BK-20883, 2016 WL 699553, at *4 (Bankr. S.D.W. Va. Feb. 22, 2016).

[25] Some courts apply the term "parties" under Fed. R. Bankr. P. 1016 to interests of parties that have appeared in the bankruptcy (such as prepetition creditors). *See In re Miller*, 526 B.R. 857, 861 (D. Colo. 2014); *In re Hennessy*, C/A No. 11-13793, 2013 WL 3939886, at *2 (Bankr. N.D. Cal. July 29, 2013); *In re Sales*, C/A No. 03-60861, 2006 WL 2668465, at * 3 (Bankr. N.D. Ohio Sept. 15, 2006). Other courts have considered the interests of both the deceased debtor's prepetition and postpetition creditors. *See In re Sanford*, 619 B.R. 380, 390 (Bankr. E.D. Mich. 2020) (finding that postpetition creditors have a cognizable interest in the deceased debtor's chapter 13 case); *Inyard*, 532 B.R. at 368 (considering the interests of both prepetition and postpetition creditors); *In re Shorter*, 544 B.R. 654, 664 (Bankr. E.D. Ark. 2015) ("Depending on the facts of the case, many courts consider the interests of all who are affected by a hardship discharge, and not just the parties to the bankruptcy case, i.e., the Debtor, the Creditors, and the Trustee."). Further, several courts consider not only the interests of all the deceased debtor's prepetition and postpetition creditors, but also the interests of the debtor's heirs and probate estate. *See In re Bond*, 36 B.R. 49 (Bankr. E.D.N.C. 1984) (considering the benefit to the deceased debtor's minor children); *In re Conn*, C/A No. 13-62278, 2015 WL 3777958, at *2–3 (Bankr. N.D. Ohio June 12, 2015) (considering benefit to surviving spouse and creditors); *In re Levy*, C/A No. 11-60130, 2014 WL 1323165, at *4 (Bankr. N.D. Ohio Mar. 31, 2014) ("[T]he court has considered the interests of other creditors, a debtor's ex-spouse, the probate estate, and a surviving joint debtor."); *In re Marshall*, C/A No. 09-

At the hearing, Debtors' counsel failed to provide any argument or evidence to support a finding that further administration of the bankruptcy case would be better for the Debtor's creditors than dismissal. Debtors' counsel admitted that he was unsure how either Mr. Ward's heirs or Mrs. Ward, or their respective creditors, would benefit from the continued administration of his case. As noted above, the Claims Register reflects three debts for which Mr. Ward is liable. Mrs. Ward is liable on two of those debts, and thus the dismissal of Mr. Ward's case would not impact them as they would still be paid under the Plan. As to the third debt—the Toyota Debt in the amount of $5,921.16—Kristen Nivens, one of Debtors' family members, is also responsible for such debt and it appears that Mr. Ward was never in possession of the vehicle but had signed on the note to help Kristen Nivens; accordingly, it would appear that paying such debt through Mr. Ward's bankruptcy would solely be in Ms. Nivens' benefit. Lastly, as the Trustee noted during the hearing, if Mr. Ward's case was to continue in bankruptcy and the Toyota Debt was to be paid through the Plan Payments, distribution to Mrs. Ward's unsecured creditors would be diluted. Accordingly, Debtors have not met their burden to support a finding that further administration of Mr. Ward's bankruptcy case would be in the best interests of the parties.

B. ***Dismissal of Mr. Ward as a Joint Debtor***

As an alternative to continued administration, Bankruptcy Rule 1016 provides that, when a Chapter 13 debtor dies, the case may be dismissed. Debtors commenced their case by filing a joint petition under Section 302(a), which permits a married couple to file jointly. Section 302 is only procedural and is "designed for ease of administration and to permit the payment of one filing fee." *In re Estrada*, 224 B.R. 132, 135 (S.D. Cal. 1998); *In re Reider*,

11603-8-RDD, 2012 WL 1155742 (Bankr. E.D.N.C. Apr. 5, 2012) (considering the interest of the deceased debtor's heirs when denying a request for a hardship discharge).

31 F.3d 1102, 1111 (11th Cir. 1994); *In re Krak*, No. 98–52115C–7W, 2001 WL 1700027, at *1 (Bankr. M.D.N.C. May 7, 2001).

A joint petition "simply results in two different debtors' bankruptcy cases being commenced by a single petition and treated as a single case for administrative purposes." *Waring*, 555 B.R. at 766 (citing *Grunwald v. Beck (In re Beck)*, 298 B.R. 616, 624 (Bankr. W.D. Mo. 2003); *see also In re Sims*, 421 B.R. 745, 748 (Bankr. D.S.C. 2010) ("Despite the joint petition filed by these debtors, the estate of each debtor remains separate unless consolidated"); *In re Strader*, No. 13–03652–HB, 2013 WL 6182233, at *3 (Bankr. D.S.C. Nov. 20, 2013) ("absent a substantive consolidation of the estates under § 302(b) the assets and liabilities of [the joint debtors] remain separate as two different bankruptcy estates that are simply being jointly administered for administrative efficiency.")

Said differently, separate estates continue to exist as to each debtor. *See In re Feltman*, 285 B.R. 82, 86 n.9 (Bankr. D.D.C. 2002); *see also In re Kevitch*, No. 04–32127F, 2006 WL 6627818 (Bankr. E.D. Pa. Feb. 8, 2006) (same); *Thomas v. Peyton*, 274 B.R. 450, 456 (E.D. Va. 2001) ("When spouses file a joint petition for bankruptcy, the separate estates are administratively consolidated for convenience and efficiency but they remain legally distinct for purposes of satisfying creditors' claims."), *aff'd sub nom. In re Bunker*, 312 F.3d 145 (4th Cir. 2002).

Accordingly, the Court can dismiss Mr. Ward while allowing Mrs. Ward to remain in her own separate bankruptcy.

CONCLUSION

Based on the record before the Court, it is hereby **ORDERED** that the Motion is **DENIED** on the basis that further administration of Mr. Ward's Chapter 13 case is neither possible nor in the best interests of the parties.

IT IS FURTHER ORDERED that Mrs. Ward's bankruptcy case may proceed in Chapter 13 under the same case number; provided, however, that Mr. Ward's name will be removed from the caption once his case is dismissed. The Trustee shall move for dismissal of Mr. Ward from the case within ten (10) days of the entry of this Order.

AND IT IS SO ORDERED.

FILED BY THE COURT
06/27/2023

Elisabetta G. M. Gasparini
US Bankruptcy Judge
District of South Carolina

Entered: 06/27/2023